

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

05032-00052

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Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]on April 15, 2008Signature /Gregory J. Cohan/Typed or printed
name Gregory J. Cohan

Application Number

10/808,718

Filed

March 25, 2004

First Named Inventor

Gerrit Reinold Jacob Melles

Art Unit

3749

Examiner

Samantha Miller

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐

applicant/inventor.

☐

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is endorsed.
(Form PTO/SB/96)☒

attorney or agent of record.

Registration number 40,959☐

attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

/Gregory J. Cohan/

Signature

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Telephone number

April 15, 2008

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☒*Total of 1 forms are submitted.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
)	
Gerrit Reinold Jacob Melles)	Examiner: Samantha Miller
)	
Serial No.: 10/808,718)	Art Unit: 3749
)	
Filed: March 25, 2004)	Conf. No.: 5646
)	
Title: OPERATION UNIT)	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**REASONS IN SUPPORT OF REQUEST FOR
PRE-APPEAL BRIEF PANEL REVIEW**

Sir:

Together with the Notice of Appeal filed concurrently with this document, Applicant respectfully requests a pre-appeal brief review of the rejections made in the subject application for the reasons presented below.

Applicants submit the following points with respect to the rejections in the Final Rejection dated October 17, 2007:

(1) No New Matter Has Been Introduced

The Office Action has indicated that claims 26 and 32 will not be entered, on the ground that the phrase "at least one gap is provided" is new matter.

Applicant respectfully points out that the gap in question is described in the specification and drawings as filed. Specifically, on page 10, lines 6-8, the specification recites that "the lower edge 18 of the walls 2... can be positioned... above the ground, leaving an opening 19 just above the ground 20." Applicant submits that the claimed gap is disclosed as opening 19.

(2) Drawings

Applicant notes that replacement formal drawings were filed on April 14, 2008, and

respectfully submits that the drawings are believed to be in proper form.

(3) Section 103 Rejection of Claims 1-25 and 27-31 over Howorth

With respect to independent claim 1, the Office Action asserts that Howorth shows an air flow unit comprising at least one air outlet opening for directing air from an air flow unit over a cover, and that air inlet means are provided for retracting air to said air flow unit from within the operating unit. Further, it is stated that the area around the operating table would form an air inlet, together with ducts b.

The area around the operating table of Howorth cannot form an air inlet, because air leaving the unit will flow under the lower edge of drapes a² into the very large space surrounding the unit, whereas the duct b, in which the air is introduced to the air flow unit, is provided above the ceiling of the space in which the unit is positioned, within the normally closed compartment D. Consequently, totally different air will be drawn into duct b; not the air that leaves the unit at the lower edges of drapes a².

In fact, Howorth expressly teaches away from retracting air from within the operating unit to the air flow unit. Howorth states that “sterile air is ...forced through the operating theater chamber to **continually change** the air therein during an operation.” (Col. 2, lines 37-39; emphasis added.) Howorth is not designed to retract air from the operating unit and return it to the air flow unit. It is designed to replenish the air of the operating unit with new, sterilized air. In fact, Howorth recites that “sterile air is passed and **changed substantially 300 times per hour...and... means are provided for exhausting air exhaled by the operating team to prevent it from contaminating the air in the compartment.**” (Col. 1, lines 11-17.) Thus, one skilled in the art would clearly be taught away from modifying Howorth to retract air to the air flow unit from within the operating unit.

With respect to claim 2, it is noted that inlet b of Howorth is not provided in the space enclosed within the unit, nor is air outlet B. These are provided above the ceiling of the unit. This is seen clearly in Figs. 1-3, and is supported by the fact that Howorth states that the air leaving tubes B “enters the operating theater downwardly....” (Col. 2, lines 34-36.) Since Howorth expressly states that after leaving outlet B, the air enters the operating unit, outlet B cannot be within the operating unit.

With respect to claims 8, 22, and 28, outlets B of Howorth extend perpendicularly away from the wall having opening A², so the outlet opening cannot extend over the width of the

opening. Further, the four outlet tubes B are positioned in the central area of the unit. Even if the combination of the four outlets B could be considered to extend along the wall having opening a², they do not extend over the width of the opening. As seen clearly in Fig. 1, outlets B do not even come close to the left and right ends of the wall, let alone extend over the width of the opening or cover.

With respect to claim 9, air exits outlet tubes B of Howorth in all directions, so the outflow direction of the outflow opening of tubes B extends in all directions about tubes B, not downward in a direction away from the wall. Further, the deflected air from outlet tubes B flows “vertically downward through the compartment...” (Col. 2, lines 24-25) It is simply not directed downward in a direction away from the wall. In fact, since the air leaves the operating unit beneath the lower edges of drapes a², the air would tend to be drawn from outlet tubes B toward the bottom of the wall, directly opposite to the claimed “direction away from said wall.”

With respect to claim 10, the Office Action asserts that the air inlet opening is the area around the operating table, and that this opening is below the outlet opening B. The area around the operating table is simply not the required air inlet opening. The air from around the operating table of Howorth does not enter the air flow unit. Rather, as discussed, above, the inlet openings, ducts b, are positioned **above** outlet opening B in compartment D, and air is drawn in to compartment D through filter d and then in to ducts b. Each of these elements through which air is introduced into the air flow unit of Howorth is positioned above outlet opening B.

With respect to claim 14, air unit b1 of Howorth cannot be connected to air outlet B by air outlet B. Air outlet B (tubes B) cannot be both an air outlet, and a connecting pipe that connects air unit b1 to the air outlet. The recited wall is the wall that includes the opening, which is the wall seen to the right in Fig. 1 of Howorth. Even if outlet tubes B could be considered connecting pipes, they are not near either side of the wall. The outlet tubes are positioned in the central portion of this wall, not near its sides. Further, Howorth does not have connecting pipes and an air flow unit that form part of the frame of the unit. The air flow unit of Howorth is positioned entirely above the unit.

With respect to independent claims 15 and 18, Howorth discloses no opening in a cloth cover, nor a flow of air guided over a cover. As seen in Figs. 1 and 3 of Howorth, there is no opening provided in drapes a². The operating table is simply pushed into the operating unit, with drapes a² falling about the operating table. Drapes a² remain intact during the operation.

With respect to independent claims 19 and 20, as noted above, Howorth does not disclose air inlet means in an operation unit for retracting air to an air flow unit, and expressly teaches away from such retraction of air. Specifically, Howorth states that “sterile air is ...forced through the operating theater chamber to **continually change** the air therein during an operation.” (Col. 2, lines 37-39; emphasis added.) In fact, Howorth recites that “sterile air is passed and **changed substantially 300 times per hour...and... means** are provided for exhausting air exhaled by the operating team to prevent it from contaminating the air in the compartment.” (Col. 1, lines 11-17; emphasis added.) Thus, one skilled in the art would be taught away from modifying Howorth to retract air to the air flow unit from within the operating unit.

(4) **Combination of Howorth and van der Waaij**

After having argued that Howorth teaches all of the features of the pending claims, the Office Action reverses course and states that Howorth possibly does not teach a foldable roof element, wheels, or air inlet means provided for retracting air from within the operation unit to the air flow unit. The Office Action then turns to van der Waaij to show these elements.

Intake opening 3 of van der Waaij cannot be considered to retract air from the operating unit. Van der Waaij discloses only two curtains on either side of the operating table, which extend only to the lower side of the table. The entire area beneath the table is open, allowing air from outside the operating area to be introduced. Air that is forced into the operating area is guided over the table in a horizontal direction **away from** the area where the air inlet is provided. Howorth takes the air from the surrounding area above the operating unit, while van der Waaij takes air from the surrounding area below the operating table.

Further, as discussed above, one skilled in the art would be taught away from modifying Howorth to retract air from the operating unit to the air flow unit. Howorth states that “sterile air is ...forced through the operating theater chamber to **continually change** the air therein during an operation.” (Col. 2, lines 37-39; emphasis added.) Howorth is not designed to retract air from the operating unit and return it to the air flow unit. It is designed to replenish the air of the operating unit with new, sterilized air. In fact, Howorth recites that “sterile air is passed and **changed substantially 300 times per hour...and... means** are provided for exhausting air exhaled by the operating team to prevent it from contaminating the air in the compartment.” (Col. 1, lines 11-17.) Thus, one skilled in the art would be taught away from modifying Howorth to retract air to the air flow unit from within the operating unit.

With respect to claims 2 and 4, van der Waaij does not disclose a roof element that is foldable over a flow unit. Guides 14 are not roof elements, rather, they merely support guide curtains 15. There is no roof element to the operating table of van der Waaij.

The Office Action asserts on page 8 that the claims should be given their broadest reasonable interpretation, that the claimed outflow direction of the outflow opening is directed downward away from the wall, and that “it should be apparent that Howorth teaches airflow in a downward direction and parallel to the wall a², not towards the wall thus driving the airflow away from the wall.” There is simply no basis for the proposition that since the air flow of Howorth is downward and parallel to the wall its air must be driven away from the wall. In fact, the opposite is true.

As noted above, the air of Howorth that is directed downwardly into the operating unit from tubes B will naturally be drawn to the place where it leaves the operating unit, namely, beneath the lower edge of drapes a². Thus, the air will in fact be driven **toward the wall**, not away from it.

(5) Conclusion

It is respectfully requested that the Panel withdraw the rejections put forth in the Final Office Action and pass this application to allowance.

Respectfully submitted,

Dated: April 15, 2008

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